COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(1) Income Tax Appeal No.66 of 2003
(Old No. 41 of 2000)

Smt. Rajeshwari Devi W/o Late Sri Jyoti Prasad,
C/o Jyoti Prasad & Bros., Anand Bhawan,
Rishikesh

..... Appellant

Versus

1. The Assistant Commissioner of Income Tax,
   Circle 1, Saharanpur
2. The Commissioner of Income Tax, Meerut

... Respondents

(2) Income Tax Appeal No.129 of 2001
(Old No. 165 of 2000)

Smt. Rajeshwari Devi W/o Late Sri Jyoti Prasad,
C/o Jyoti Prasad & Bros., Anand Bhawan,
Rishikesh

..... Appellant

Versus

1. The Assistant Commissioner of Income Tax,
   Circle 1, Saharanpur
2. The Commissioner of Income Tax, Meerut

... Respondents

Sri Arvind Vashisth, Advocate for the appellant.
Sri S.K. Posti, Advocate for the respondents.

Dated: December 09, 2005

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

The applications filed today by learned counsel for the applicant/appellants are taken on record.

2. Both these appeals have been preferred against the consolidated order dated 14.02.2000 passed by Income Tax Appellate Tribunal 'E' Bench, New Delhi in ITA No.6562/D/95 and in ITA No.7082/D/92 respectively for the assessment year 1985-86.

3. Brief facts of the case-giving rise to these appeals are that assessee in this case filed his return upto assessment year 1984-85. Return for the assessment year 1985-86 was filed by the assessee on 05.06.1990 in response to the notice u/s 148 at the total income of Rs. 3,700/-. The assessee in the return put a note giving statement of income that assessee had purchased an immovable property bearing No.55, Hardwar Road, Dehradun vide sale deed dated 19.06.1984 from Smt. Raj Dulari for a sum of Rs.3.00 lacs. The investment of Rs.3.00 lacs had been shown as arranged by raising loans from the following parties: -

1.	Shri Madhu Sudan Sharma S/o Sri Babu Ram Sharma R/o 11, Raja Road, Dehradun	1,00,000/-
2.	Smt. Neera Sngh W/o Sri Rajeshwar Singh R/o 55 Hardwar Road, Dehradun	1,00,000/-
3.	Sri L.M. Singh S/o Sri R.D. Singh R/o New Road, Dehradun	65,000/-
4.	Shri Vijendra Kumar Agrawal C/o M/s Bhagwan Das, Mathura Road, Rishikesh	50,000/-
	Total	3,15,000/-

4. In order to verify the explanation given by the assessee for the above arrange loans, the Assessing Officer issued notices to all the above four persons u/s 131 of I.T. Act and also wrote a letter to the assessee fixing a date to appear

before him to prove the said loans credited to the assessee by the aforesaid persons.

5. Sri Vijendra Kumar attended and submitted that he had paid Rs.50,000/- on 22.06.1984 to the assessee by a bearer cheque but no receipt was taken by him from the assessee. He further stated that he is an income tax payee and has disclosed income under the Voluntary Disclosure Scheme and has paid income tax for the year 1985-86. But the statement of Sri Vijendra Kumar Aggarwal was disbelieved by the Assessing Officer and the claim of Rs.50,000/- paid by Sri V.K. Aggarwal to the assessee was considered as cash credit. Likewise Sri L.M. Singh also attended and he submitted that he had paid Rs.65,000/- to the assessee in June, 1984 after withdrawing the amount from bank against the F.D.R. which he had in the Bank. He also did not get any receipt for the loan advanced to the assessee, therefore the Assessing Officer also disbelieved the statement of Sri L.M. Singh and considered the amount of Rs.65,000/- to be cash credit. Sri Madhu Sudan Sharma also attended and stated that he had paid Rs.1.00 lac to the assessee. He also stated that he was also an income tax payee. Smt. Neera Singh did not attend the office of Assessing Authority in response to the notice issued under section 131 of the I.T. Act, therefore, the loan advanced by Smt. Neera Singh to the assessee was also treated to be cash credit. Accordingly, the Assessing Officer found that some portion of the purchased property was hired on rent at the rate of Rs.450/- and he calculated the annual income of the assessee after deducting 1/6th of repairs which was Rs.4,500/-. The total income of the assessee was assessed as under: -

Share income in M/s Jyoti Prasad & Bros.	
Subject to rectification	Rs.3,700/-
House property income	Rs.4,500/-
Cash credit u/s 68 of I.T. Act	Rs.3,15,000/-
Total	Rs.3,23,200/-

6. Feeling aggrieved by the assessment order, the assessee preferred a First Appeal before the Commissioner (Appeals), Muzaffarnagar. The Commissioner (Appeals) confirmed the addition of Rs. 1.00 lac in respect of loan of Sri Madhusudan Sharma, accepted the statement of Sri Virendra Kumar Aggarwal and Sri L.M. Singh and remanded the matter back to the Assessment Officer for fresh assessment in respect of Smt. Neera Singh. On set aside of the assessment in respect of loan of Rs.1.00 lac from Smt. Neera Singh, the Assessing Officer passed a fresh under u/s 143(3)/251 of I.T. Act dated 29.12.1993. During the fresh assessment proceedings, Smt. Neera Singh appeared before Assessment Officer and her statement on oath was recorded. However, the AO again made addition of Rs.1.00 lac treating her loan as unexplained cash credit under section 68 of I.T. Act. Thereafter, the assessee preferred an appeal before CIT (Appeals) Dehradun against the fresh assessment order. The Commissioner (Appeals) vide his order dated 07.08.1995 sustained the addition of Rs.1.00 lac in respect of her loan and dismissed the appeal of the assessee. Feeling aggrieved by the order of CIT (Appeals), assessee preferred two appeals before Income Tax Appellate Tribunal, Delhi Bench-E, New Delhi (ITAT) on the ground that the loan advanced to the assessee was explained and was fully proved by the creditors, therefore, the Assessing Officer as well as Commissioner (Appeals) fell into error in not accepting the statement made by them on oath. The ITAT vide its consolidated order dated 14.02.2000 confirmed the addition of Rs.1.00 lac

under Sections 68 and 69 of I.T. Act and rejected the contention of the assessee and accordingly dismissed the appeals. Feeling aggrieved, the appellants have come up in the appeal.

7. We have heard learned counsel for the parties and perused the entire evidence on record.

8. The following substantial question of law arises for our consideration: -

> ***"Whether on the facts and circumstances of the case the explained advanced loan could be treated as cash credit u/s 68 of the Income Tax Act"?***

9. The learned ITAT has recorded a finding that Shri Madhu Sudan Sharma has disclosed his income u/s 143(1) of I.T. Act under the V.D.I. scheme but it wrongly held that the same was not sufficient and not a clinching evidence of his capacity to advance a loan of Rs.1.00 lac. The capacity to advance a loan by a person depends on the different circumstances. It is not disputed that Sir Madhu Sudan Sharma had disclosed his income u/s 143(1) of the I.T. Act under the V.D.I. scheme and had paid income tax. This statement is sufficient that Sri Madhu Sudan Sharma was capable to advance Rs.1.00 lac and had he shown his voluntary income, the Department would have assessed on the voluntary income and then advance of Rs.1.00 lac could be added to the return of Sri Madhu Sudan Sharma and he the same was admitted by him in the present case. Therefore, in our opinion, the Assessing Officer, Commissioner (Appeals) and learned I.T.A.T. have fell into error in not accepting the fact that Sri Madhu Sudan Sharma was capable to advance Rs.1.00 lacs in view of the fact that he was an income tax payee and had disclosed his income u/s 143(1) of I.T. Act.

10. So far as the case of Smt. Neera Singh is concerned, after the remand of the case she appeared before the Assessing Officer and confirmed the loan advanced by her to the assessee and she also explained the source of her income. She was earning salary and having income from tuitions as a Teacher from last many years. She was assessed to income tax under the V.D.I. scheme and in her statement of affairs filed with the return she had shown her capital and loan advanced by her to the assessee. The ITAT fell into error in ignoring the fact only for the reason that she had shared income, therefore, she was not capable to advance Rs.1.00 lac, therefore, the amount was unexplained and was considered to be cash credit u/s 68 of I.T. Act. The statement on oath of Smt. Neera Singh and the fact that she was an income tax payee clearly discloses that she advanced a loan for the amount of Rs.1.00 lac to the assessee as interest free loan.

11. Therefore, for the reasons recorded above, in our opinion the explained loan advanced to the assessee cannot be held to be unexplained cash credit u/s 68 of I.T. Act. It is settled law that once the burden of proof was discharged by the assessee by producing the evidence and statement recorded on oath, the burden shifts on the Revenue to disbelieve the statement of fact made on oath. This view is supported by a judgment of the Calcutta High Court in the case of {***"Sriram Jhabarmull (Kalimpong) Ltd. Vs. Commissioner of Income Tax" reported in 1967 ITR Volume 64 Page 314***}. In the said case, it was held that *once the burden of proof on the part of the assessee is discharged, the Income-Tax Officer is not entitled to reject the assessee's explanation without some other positive evidence falsifying the assessee's case.*

12. Accordingly, the question framed is answered in favour of the assessee and against the department. The appeals are allowed accordingly. No order as to costs.

(J.C.S. Rawat, J.) (P.C. Verma, J.)

Rajeev Dang

(J.C.S. Rawat, J.) (P.C. Verma, J.)

Rajeev Dang